

SECOND REGULAR SESSION

# SENATE BILL NO. 667

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WASSON.

Read 1st time January 17, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

5327S.011

## AN ACT

To amend chapter 537, RSMo, by adding thereto one new section relating to a peer review process for licensed architects, landscape architects, land surveyors, and engineers.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 537, RSMo, is amended by adding thereto one new section, to be known as section 537.033, to read as follows:

**537.033. 1. As used in this section, unless the context clearly indicates otherwise, the following words and terms shall have the meanings indicated:**

(1) "Design professional", an architect, landscape architect, professional land surveyor, or professional engineer licensed under the provisions of chapter 327 or any corporation authorized to practice architecture, landscape architecture, land surveying, or engineering under section 327.401 while acting within their scope of practice;

(2) "Lessons learned", internal meetings, classes, publications in any medium, presentations, lectures, or other means of teaching and communicating with the employees, partners, and coworkers of the design professional who prepared the project's design for the purpose of learning best practices and reducing errors and omissions in design documents and procedures;

(3) "Peer review process", a process through which design professionals evaluate, maintain, or monitor the quality and utilization of architectural, landscape architectural, land surveying, or engineering services, prepare internal lessons learned, or exercise any combination of such responsibilities.

20           (4) "Post-project completion", the construction of the project  
21 covered by the design professional's design documents has reached  
22 substantial completion, as that term is defined in section 436.327.

23           2. A peer review process shall only be performed by a design  
24 professional licensed in any jurisdiction in the United States in the  
25 same profession as would be required under chapter 327 to prepare the  
26 design documents being reviewed, or in a case requiring multiple  
27 professions, by a person or persons holding the proper licenses. A peer  
28 review process may be performed by one or more design professionals  
29 appointed by the partners, shareholders, board of directors, chief  
30 executive officer, quality control director, or employed design  
31 professionals of a partnership or of a corporation authorized under  
32 section 327.401 to practice architecture, landscape architecture, land  
33 surveying, or engineering, or by the owner of a sole proprietorship  
34 engaged in one or more of such professions. Any individual identified  
35 in this subsection and performing a peer review shall be deemed a peer  
36 reviewer.

37           3. Each peer reviewer described in this subsection shall be  
38 immune from civil liability for such acts so long as the acts are  
39 performed in good faith, without malice, and are reasonably related to  
40 the scope of inquiry of the peer review process. The immunity in this  
41 subsection is intended to cover only the following:

42           (1) Outside peer reviews by a third-party design professional  
43 who is not an employee, coworker, or partner of the design professional  
44 whose design is being peer reviewed before, during, or after substantial  
45 completion of the project;

46           (2) Post-project completion peer review, whether performed in-  
47 house by employees, coworkers, or partners of the design professional  
48 who prepared the design, or by a third-party peer reviewer.

49           4. This section does not provide immunity to any in-house peer  
50 reviewer, other than a post-project completion review, when performed  
51 by employees, coworkers, or partners of the design professional who  
52 prepares the design, nor are any such documents or peer review  
53 comments inadmissible into evidence in any judicial or administrative  
54 action.

55           5. Except as otherwise provided in this section, the interviews,  
56 memoranda, proceedings, findings, deliberations, reports, and minutes  
57 of the peer review process, or the existence of the same, concerning the  
58 professional services provided to a client or member of the public are  
59 privileged and shall not be subject to discovery, subpoena, or other  
60 means of legal compulsion for their release to any person or entity or  
61 be admissible into evidence in any judicial or administrative action for  
62 failure to provide appropriate architectural, landscape architectural,  
63 land surveying, or engineering services. Except as otherwise provided  
64 in this section, no person who was in attendance at, or participated in,  
65 any peer review process or proceedings shall be permitted or required  
66 to disclose any information acquired in connection with or in the  
67 course of such proceeding, or to disclose any opinion, recommendation,  
68 or evaluation of the peer reviewer, or any member of a peer review  
69 committee; provided, however, that information otherwise discoverable  
70 or admissible from original sources is not to be construed as immune  
71 from discovery or use in any proceeding merely because it was  
72 presented during proceedings before a peer reviewer nor is a member,  
73 employee, or agent involved in any such process, or other person  
74 appearing before a peer reviewer, to be prevented from testifying as to  
75 matters within his or her personal knowledge and in accordance with  
76 the other provisions of this section, but such witness cannot be  
77 questioned about testimony or other proceedings before any peer  
78 review process or peer reviewer or about opinions formed as a result  
79 of such process. The disclosure of any interview, memoranda,  
80 proceedings, findings, deliberations, reports, or minutes to any person  
81 or entity, including but not limited to governmental agencies,  
82 professional accrediting agencies, or other design professionals,  
83 whether proper or improper, shall not waive or have any effect upon  
84 its confidentiality, nondiscoverability, or nonadmissibility.

85           6. Nothing in this section shall limit authority otherwise  
86 provided by law of the Missouri board for architects, professional  
87 engineers, professional land surveyors, and landscape architects to  
88 obtain information by subpoena or other authorized process from a  
89 peer reviewer or to require disclosure of otherwise confidential

90 information relating to matters and investigations within the  
91 jurisdiction of such licensing board.

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